

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RICARDO DENNIS CORDOVA,

Plaintiff,

v.

LAKE COUNTY, et al.,

Defendants.

Case No. 18-cv-00367-JSW (TSH)

**DISCOVERY ORDER**

Re: Dkt. No. 147

Plaintiff Ricardo Cordova moves to compel a further deposition of Chief Probation Officer Rob Howe of the Lake County Probation Department. Defendants Deputy Sheriff Aaron Clark and Lake County oppose. ECF No. 147. The Court **GRANTS** the motion and **ORDERS** that Plaintiff may depose Howe in a second deposition not to exceed three and a half hours.

Rule 30 states that “[a]n objection” during a deposition “must be stated concisely in a nonargumentative and nonsuggestive manner.” Fed. R. Civ. Proc. 30(c)(2). In addition, “[a] person may instruct a deponent not to answer only when necessary to preserve a privilege, to enforce a limitation ordered by the court, or to present a motion under Rule 30(d)(3).” *Id.* Judge White’s Standing Order further provides that “[s]peaking objections or those calculated to coach the deponent are prohibited.” The Court finds that a further deposition of Howe is warranted because of defense counsel’s rampant misconduct during the deposition.

Only a few minutes into the deposition, defense counsel disrupted the proceeding by picking a fight over whether Plaintiff’s counsel could ask how Howe came to be appointed as chief probation officer. Under the plain language of Rule 30, if Defendants’ counsel thought the information was irrelevant, his remedy was to state a relevance objection. Instead, he spent several pages arguing with the questioning attorney and then ultimately instructed the witness not

to answer. Depo 14:17-18:9. This conduct was improper.

Defense counsel also repeatedly instructed the witness not to answer based on meritless invocations of the attorney-client privilege. As a reminder, the privilege protects attorney-client communications; non-privileged factual information does not become privileged merely because you learned it from your attorney. So, this is improper:

Q. Got it. Do you understand that my client, Mr. Ricardo Cordova, the plaintiff in this case, has sued Lake County for failing to update his post-release community supervision status?

A. That is my understanding.

MR. WHITEFLEET: Lacks facts. And – and hold on. And to the extent that you have any information that’s solely based on attorney-client communications, you’re to exclude that. If you have no information outside attorney-client communications, then your response is “I have no information.”

A. I have no information.

Depo 21:4-16.

So is this:

Q. Are you aware, Mr. Howe, that Lake County has provided interrogatory responses in this case?

MR. WHITEFLEET: Well, I’ll object to the extent that you’re asking for attorney-client communications. You can respond to the extent that you have any information outside those communications.

A. No. I don’t believe I do.

BY MS. RICHEY:

Q. Are you aware that your name was listed in one of the interrogatory responses as providing information to answer one of the interrogatories?

MR. WHITEFLEET: Same objection. Same instruction. So you can respond to the extent that you have information outside any attorney-client communications.

A. No, I do not.

Depo 113:18-114:11

And this:

Q. Are you aware that plaintiff Ricardo Cordova was on PRCS with Lake County sometime in 2015?

1 MR. WHITEFLEET: And you can answer that question to the extent  
2 you have any information outside the attorney-client  
3 communications.

4 A. Then, no.

5 Depo 140:11-18.

6 In addition, throughout the deposition defense counsel constantly coached the witness with  
7 his objections, and most of the time the witness testified in line with the coaching. For example,  
8 defense counsel did not want the witness to say what information is or is supposed to be entered in  
9 the case management system that is at the heart of this case, and the witness understood he was  
10 being coached to avoid giving definitive testimony on that point:

11 Q. Do you know if a supervising probation officer would update the  
12 case management system to reflect an address change for someone on  
13 P – PRCS?

14 MR. WHITEFLEET: Objection. Incomplete hypothetical. Calls for  
15 speculation. Vague as to time. Assumes facts.

16 A. It's simply my understanding that pertinent information gained  
17 from – from any source would be updated when reasonably practical  
18 when we know.

19 BY MS. RICHEY:

20 Q. You said "pertinent information." What would you consider  
21 pertinent information that would be updated in the case management  
22 system when it's reasonably practical to do so?

23 MR. WHITEFLEET: Objection. Incomplete hypothetical. Calls for  
24 speculation. Vague as to time.

25 A. Yeah. Every scenario could be different. I was speaking  
26 specifically what you just – the example you gave, a change of  
27 address.

28 BY MS. RICHEY:

Q. So it's true that you consider a change of address pertinent  
information that should get updated in the case management system  
whenever it's reasonably practical to do so?

MR. WHITEFLEET: Objection. Calls for improper opinion. Overly  
broad. Incomplete hypothetical. Calls for speculation.

A. Yeah. Again, every situation's different.

BY MS. RICHEY:

Q. It's a yes-or-no answer.

MR. WHITEFLEET: No, Carrie. You can't direct him to say yes or  
no.

A. Yeah. As I said, every – every situation’s different.

BY MS. RICHEY:

Q. Okay. I’m just going to ask again in a different way. What information do you believe, in your personal opinion, is pertinent information that should be updated in the case management system whenever it is reasonably practical to do so?

MR. WHITEFLEET: Objection. Incomplete hypothetical. Overly broad. Calls for speculation. Calls for improper opinion. Assumes facts.

A. It’s – it’s very broad. It could be any number of things, and a lot of it would be at the discretion of the probation officer knowing the case. So there’s a lot of different things that could be pertinent.

BY MS. RICHEY:

Q. Can you share with me today in your deposition what “any number of those things” are that you could be referring to?

MR. WHITEFLEET: Same objections.

A. Well, again, going back to your example, a change of address.

BY MS. RICHEY:

Q. Are there any other examples that you can think of in your deposition today that would fall under the same category?

MR. WHITEFLEET: Same objections. Vague.

A. Progress made by an individual. Terms – any terms of things that would be pertinent.

BY MS. RICHEY:

Q. Okay.

A. Every – every contact a probation officer might have with an individual could be different.

Q. Anything else?

MR. WHITEFLEET: Same objections.

A. No.

BY MS. RICHEY:

Q. Besides the information that you listed today during your deposition, you’re not aware of any other pertinent information that should be updated in the case management system whenever it’s reasonably practical to do so?

MR. WHITEFLEET: Objection. It misstates testimony. Argumentative. Incomplete hypothetical. Calls for speculation. Assumes facts. Vague.

1 A. Yeah. I didn't say what I listed was the only thing pertinent. What  
2 I said was there could be any number of things and it's different for  
every case.

3 BY MS. RICHEY:

4 Q. Is there anything else that you're willing to share, specific  
examples, today during your deposition. I understand you said that  
there's multiple things, but I'm asking for specifics, specific items.

5 MR. WHITEFLEET: Objection. Asked and answered.  
6 Argumentative as to willing to share.

7 BY MS. RICHEY:

8 Q. Mr. Howe, is there anything else that you would consider pertinent  
information that should be updated in the case management system  
when it's reasonably practical to do so that you haven't already  
9 mentioned specifically during your deposition today?

10 MR. WHITEFLEET: Objection. Incomplete hypothetical. Calls for  
speculation. Overly broad. Vague as to time. Asked and answered.  
11 Assumes facts. Calls for improper opinion.

12 A. Again, I do believe I gave you some specifics and my answer  
would still be it's case by case. It could be any number of things.

13 Depo 76:24-81:14. And while the above-quoted excerpt was among the worst examples of  
14 coaching, and the willingness to be coached, the coaching occurred throughout the deposition.  
15 E.g., Depo 23:2-22; 38:18-39:1; 39:16-25; 41:17-23; 58:20-59:1; 59:3-15; 71:1-13; 99:2-22;  
16 108:10-24; 115:6-15; 118:6-121:4; 133:21-134:5; 137:16-138:5.

17 To be fair to the witness, there were a few instances when even aggressive coaching by  
18 defense counsel failed to alter the witness's testimony. E.g., Depo 63:4-18 ("Q. How is Lake  
19 County notified by the CDCR – sorry – by CDCR that they're receiving an individual under  
20 PRCS? MR WHITEFLEET: Well, I'm going to object. In – in the way it's phrased, in terms of  
21 the county being notified, which implies the board. So that's argumentative. Assumes facts. And  
22 then the question itself is an incomplete hypothetical. Overly broad. Calls for speculation. BY  
23 MS. RICHEY: Q. You can answer. A. Again, in my discussions with Ms. Mondfrans, I've  
24 learned that we receive emails from CDCR directly."); 75:23-76:6.

25 And there were other instances when the witness let himself be coached, only then to make  
26 clear he understood the question and was able to and did answer it. E.g., Depo 124:23-125:9 ("Q.  
27 I am showing you, Mr. Howe, what has been marked as Exhibit 7. Do probation officers at Lake  
28 County go through Probation Officer Core Course training? MR. WHITEFLEET: Objection.

Vague as to time. BY MS. RICHEY: Q. Are you going to answer? A. I think the objection's a good objection. It is vague as to time. Probation officers do attend Core Course sometime within the first year of employment."); 135:8-14 ("Q. And do you interact with the frontline – frontline probation officers on any – on a regular basis? MR. WHITEFLEET: Objection. Vague. A. Yeah. I did – it is vague. I see them. It's an office. I see them very frequently. We talk.")).

At other times, defense counsel's objections, even if not coaching, were simply disruptive and frivolous. E.g., Depo 24:12-18 ("Q. Are you responsible for training probation officers that are in the probation department as the chief probation officer? MR. WHITEFLEET: Objection. Vague and argumentative as to the term 'responsible.' May call for a legal conclusion. Overly broad. Vague as to the type of training."); 25:4-8 ("Q. Do probation officers themselves have training requirements? MR. WHITEFLEET: Objection. Vague. Vague as to time. Overly broad. May call for a legal and/or expert testimony."); 34:8-13 ("Q. Okay. As the probation officer – as the chief probation officer, did you provide the materials to train the individual on PRCS? MR. WHITEFLEET: Objection. Assumes facts. Vague. Argumentative."); 62:20-24; 68:16-21; 72:4-12.

The baseless instructions and objections, rampant coaching, and lengthy stretches of attorney argument that accompanied this misconduct substantially and improperly interfered with Plaintiff's ability to take this deposition. Accordingly, the Court **ORDERS** that Plaintiff may depose Howe in a second deposition, not to exceed three and a half hours.

**IT IS SO ORDERED.**

Dated: May 12, 2023

  
THOMAS S. HIXSON  
United States Magistrate Judge